

ORRICK
MEMO ENDORSED

March 7, 2007

BY HAND

The Honorable Richard M. Berman
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Room 650
New York, NY 10007

Re: Great White Bear, LLC v. Mervyns, LLC (06 CV 10058) **Richard M. Berman, U.S.D.J.**

One responsive (reply) brief
of 15 pages is more than sufficient,
to reply & respond to cross motion
to amend (double spaced, normal
margins)

Lisa T. Simpson
(212) 506-3767
lsimpson@orrick.com

SO ORDERED:

Date: 3/7/07 Richard M. Berman

Dear Judge Berman:

We write on behalf of Mervyn's LLC ("Mervyn's"), Defendant in the above-referenced matter. On February 7, 2007, Mervyn's filed a motion pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for judgment on the pleadings due to Plaintiff's inability to satisfy the Statute of Frauds and for failure to state a claim. On March 1, 2007, Plaintiff Great White Bear LLC filed its opposition papers. Those papers included not only an opposition to Mervyn's motion, but also a cross motion pursuant to Federal Rule Of Civil Procedure 15(a) to amend the complaint in this matter. We note that Plaintiff, by filing and serving that motion without first requesting a Pre-Motion Conference, is in violation of Your Honor's Individual Practices.

Since, due to the lack of a Pre-Motion Conference, we have not had the opportunity to address with Your Honor the issues raised by the filing of Plaintiff's additional motion, we write to respectfully request clarification on Defendant's responsive obligations. As these motions are related, rather than file a reply on Defendant's motion for judgment on the pleadings and a separate opposition to Plaintiff's motion to amend, if it would so please the Court, Defendant are prepared to address both motions in one responding brief. Given Defendant's need to address not only the current complaint in its Reply, but also, in opposition to Plaintiff's motion to amend, the additional and revised claims included in Plaintiff's proposed Second Amended Complaint, Defendant hereby respectfully requests that it be permitted 25 pages, Your Honor's set page limit for opposition, in which to reply and oppose.

The due date for Defendant's reply is currently set for March 16, 2007.

We would be happy to discuss this issue at the Court's convenience and look forward to hearing from Your Honor as to how you would like for us to proceed.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/7/07

cc: Philip A. Byler, Esq. (By Hand)
Counsel for Great White Bear, LLC

Respectfully submitted,

Lisa T. Simpson
Lisa T. Simpson

07 2007
RICHARD M. BERMAN